

FEB 05 2002

Michael N. Milby, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARK NEWBY, et al., Individually
and On Behalf of All Others Similarly
Situating,

Plaintiffs,

vs.

ENRON CORP., et al.,

Defendants

Civil Action No. H-01-3624
(Consolidated Securities Suits)

Consolidated with: H-01-3630
H-01-3647; H-01-3652; H-01-3660
H-01-3670; H-01-3671; H-01-3681
H-01-3682; H-01-3686; H-01-3717
H-01-3733; H-01-3734; H-01-3735;
H-01-3736; H-01-3737; H-01-3789;
H-01-3903; H-01-3914; H-01-3993;
H-01-4009; H-01-4071; H-01-4106;
H-01-4168; H-01-4189; H-01-4198;
H-01-4229; H-01-4308; H-01-4370
JURY TRIAL DEMANDED

AMALGAMATED BANK, as Trustee for the
LONGVIEW COLLECTIVE INVESTMENT
FUND, LONGVIEW CORE BOND INDEX
FUND and CERTAIN OTHER TRUST
ACCOUNTS, Individually and On Behalf of All
Others Similarly Situated,

Plaintiff,

vs.

KENNETH L. LAY, et al.

Defendants.

Civil Action No. H-01-4198

DECLARATION OF STATE OF WISCONSIN INVESTMENT BOARD IN
SUPPORT OF THE APPLICATION OF AMALGAMATED BANK AND OTHERS FOR
(1) A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY
A PRELIMINARY INJUNCTION SHOULD NOT BE ENTERED FREEZING AND
IMPOSING A CONSTRUCTIVE TRUST OVER INSIDER TRADING PROCEEDS,
(2) ACCOUNTING OF INSIDER TRADING PROCEEDS, AND
(3) LIMITED EXPEDITED DISCOVERY

248

COMES NOW, State of Wisconsin Investment Board ("SWIB"), through its attorneys, James E. Doyle, Attorney General and MALLON & JOHNSON, P.C., and files this declaration in support of the application of Amalgamated Bank for: (1) a temporary restraining order and a preliminary injunction freezing and imposing a constructive trust over insider trading proceeds, (2) accounting of insider trading proceeds and (3) limited expedited discovery.

Amalgamated Bank's Motion

On December 5, 2001, Amalgamated Bank, as Trustee for the Longview Collective Investment Fund, Longview Core Bond Index Fund and Certain Other Trust Accounts, Individually and On Behalf of All Others Similarly Situated, filed suit in this District (H-01-4198) as captioned above. It then filed an *Ex Parte* Application for (1) a Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Be Entered Freezing and Imposing a Constructive Trust over Insider Trading Proceeds, (2) Accounting of Insider Trading Proceeds, and (3) Limited Expedited Discovery. SWIB hereby supports the above-referenced Motion.

Interest of the State of Wisconsin Investment Board

State of Wisconsin Investment Board ("SWIB") is a state agency of the State of Wisconsin. SWIB serves as investment manager for the Wisconsin public employee retirement system. Over 475,000 current or former employees of Wisconsin state agencies, school districts and local governments participate in the Wisconsin retirement system. Contributions made by these employees and their employers are invested by SWIB to finance retirement benefits. The Wisconsin Retirement System is the tenth largest public pension fund in the United States. SWIB currently has over \$65 billion in retirement funds and other public money under its management.

Over the last five years, SWIB has participated in approximately 100 securities class action lawsuits and recovered over \$35 million in claims.

SWIB has a significant financial interest in the relief sought by the Class in the consolidated fraud class action captioned *Newby, et al. v. Enron Corp., Civil Action No. H-01-3624*. During the Class Period, SWIB bought Enron stock and bonds, netting an estimated loss of approximately \$9 million on the stock and \$36 million on the bonds.

**The Relief Sought by Amalgamated Bank is Necessary To Protect
The Interests of the Public, as well as, the State of Wisconsin Investment Board**

Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder prohibit any person, in the offer or sale of a security, or in connection with the purchase or sale of a security, from engaging in fraudulent conduct. Specifically, these provisions prohibit any person from 1) using any device, scheme or artifice to defraud; 2) making material misstatements of fact or omitting to state material facts; or 3) participating in any act or practice that operates as a fraud.

SWIB believes that the above-sought relief is necessary in this case. Under Rule 65 of the Federal Rules of Civil Procedure, a court may grant a temporary restraining order to prevent immediate and irreparable injury, loss or damage. Injunctions sought under the federal securities laws are primarily intended to protect the investing public from future misconduct. SEC v. Youmans, 729 F.2d 413, 415 (6th Cir. 1984). Once the equity jurisdiction of the district court has been properly invoked, a variety of equitable remedies are available to the Court to effectuate the statutory purpose of the securities laws, including the ordering of non-injunctive relief in a variety of forms. See J.I. Case Co. v. Borak, 377 U.S. 426, 433 (1964). In particular, the Court may require defendants to disgorge ill-gotten gains obtained from violating the securities laws,

and to pay prejudgment interest thereon. See SEC v. Fischbach Corp., 133 F.3d 170, 175 (2d Cir. 1997) (district court has broad powers to order disgorgement of "ill-gotten" gains obtained through violations of securities laws); SEC v. First Jersey Securities, Inc., 101 F.3d 1450, 1474 (2d Cir. 1996) (same). The purpose of disgorgement is "to deprive the wrongdoer of his unjust enrichment and to deter others from violating the securities laws." SEC v. First City Financial Corp., 890 F.2d 1215, 1230 (D.C.Cir. 1989).

Given the large amount of funds the defendants may have taken as a result of their violations of the federal securities laws and the massive financial damages investors have suffered, disgorgement of ill-gotten gains and prejudgment interest may be most appropriate in the instant matter. In order to enforce the equitable remedy of disgorgement, this Court has the power to freeze a defendant's assets to ensure that the defendant will not liquidate or encumber assets pending the entry of a final order. As stated in SEC v. Vaskevitch, 657 F. Supp. 312, 315 (S.D.N.Y. 1987), "...the court certainly has the ability to ensure that the defendants' assets are not secreted or dissipated before entry of final judgment concluding this action." Indeed, courts have often recognized that a disgorgement order will be rendered meaningless unless an asset freeze is imposed prior to the time of entry of final judgment. See, e.g., International Controls Corp. v. Vesco, 490 F.2d 1334, 1347 (2d Cir. 1974); SEC v. General Refractories Co., 400 F. Supp. at 1259 (court may temporarily freeze assets where such assets "are clearly related to the alleged scheme, in order to assure a source to satisfy that part of the final judgment which might [ultimately] be ordered.').

Granting the injunctive relief sought in this case serves the important and well-established precedent, in cases involving violations of the federal securities laws, of deterring

future violations of the federal securities laws. SEC v. Youmans, 729 F.2d at 415; Hect v. Bowles, 321 U.S. 321, 329 (1944). SWIB believes it is important that immediate action be taken to assure that the assets acquired by defendants through improper insider trading be protected from any potential dissipation. The magnitude of the losses resulting from alleged misconduct against Enron Corporations' officers and directors for violating the federal securities laws in attempting to retain over \$1.1 billion in illicit insider trading proceeds, when investors, public employees and pensioners have sustained significant losses of their investments and in their pension funds, is unprecedented. In addition, the bankruptcy of Enron caused by the defendants' illegal conduct will likely result in much of the plaintiffs' losses going uncompensated. It would be inequitable for the court to allow the defendants to keep their ill-gotten gains under these circumstances.

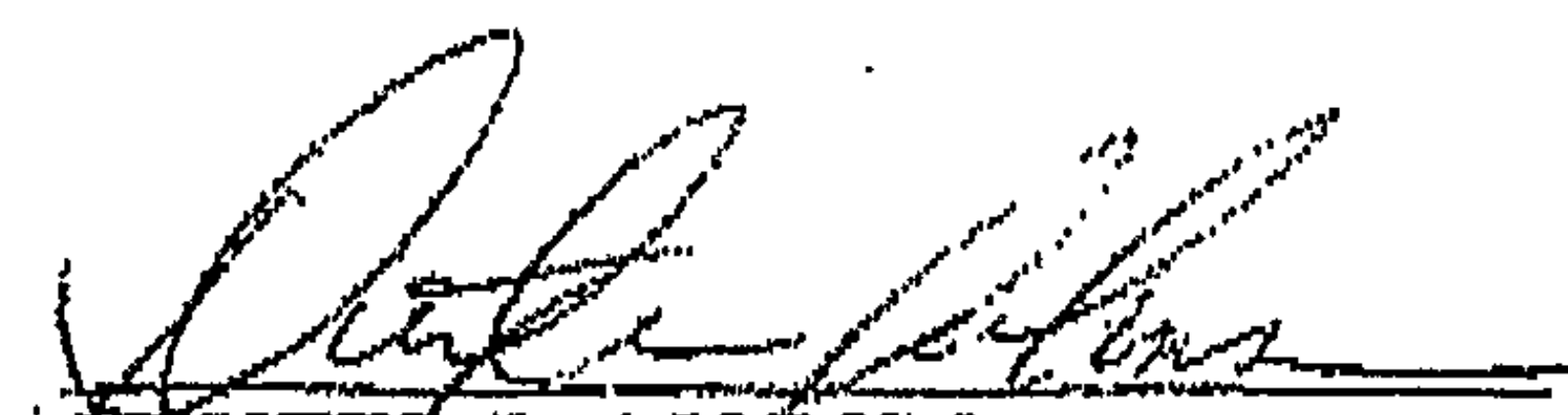
By granting the injunctive relief Amalgamated Bank seeks, SWIB believes the Court furthers the important legislative purpose of deterring insider violations of the federal securities laws while "maintain[ing] the integrity of American capital markets." Gluck v. CellStar Corp. 976 F.Supp. 542, 544 (N.D. Tex. 1997)(citing, Conference Report on Securities Litigation Reform, H.R.Rep. No. 369, 104th Congress, 1st Sess. 31, reprinted in 1995 U.S.C.C.A.N. 679, 730). Significantly, "[m]eritorious suits,...[will help] maintai[n] public and private confidence in the markets and serve as strong deterrents to illegal action and nondisclosure by corporate fiduciaries." Gluck, 976 F. Supp. at 544.

Accordingly, SWIB supports Amalgamated Bank and others Application for (1) a temporary restraining order and a preliminary injunction freezing and imposing a constructive trust over insider trading proceeds, (2) accounting of insider trading proceeds and (3) limited

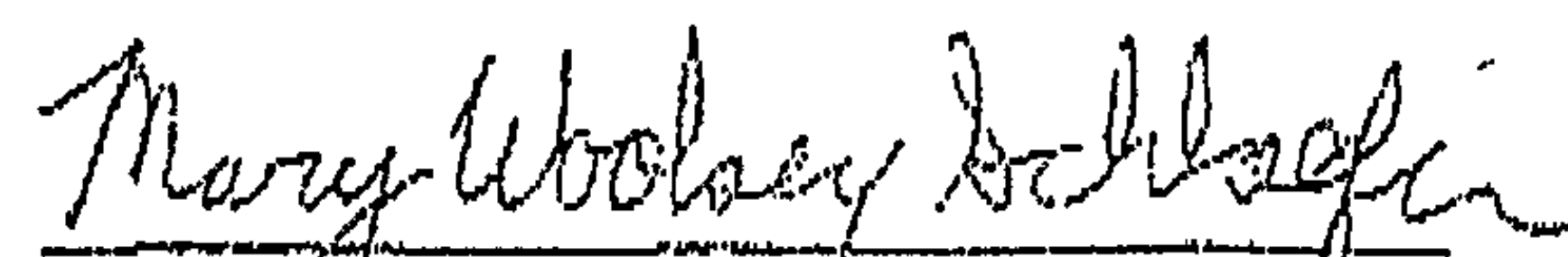
expedited discovery. SWIB believes that taking the above steps is supported substantially by case precedent and would be one of the most effective methods for achieving the deterrence goal of the federal securities laws to prevent future securities fraud.

Respectfully submitted,

MALLON & JOHNSON, P.C.


DEXTER B. JOHNSON
Attorney Registration No. 6194932

JAMES E. DOYLE
Attorney General
State of Wisconsin


MARY WOOLSEY SCHLAEFLI
Assistant Attorney General
Wisconsin State Bar #1003171

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure, I hereby certify that a true and correct copy of this instrument has been forwarded to the following counsel of record via U.S. Mail on this 5th day of ~~January~~ *February* 2002, properly addressed as follows:

H. Carl McCall
Comptroller of the State of New York
Kristina A. Burns, Counsel
Alfred E. Smith State Office Building
Albany, New York 12236
(518) 474-3444

**MILBERG WEISS BERSHAD HYNES
& LERACH LLP**
Melvyn I. Weiss
Steven G. Schulman
Samuel H. Rudman
One Pennsylvania Plaza
New York, NY 10119-1065
(212) 594-5300

**MILBERG WEISS BERSHAD HYNES
& LERACH LLP**
William S. Lerach
Darren J. Robbins
G. Paul Howes
James J. Jaconette
Thomas E. Glynn
600 West Broadway, Suite 1800
San Diego, CA 92101
(619) 231-1058

SUSMAN GODFREY L.L.P.
Stephen Susman
1000 Louisiana Street
Suite 5100
Houston, TX 77002-5096
(713) 651-9366

NICKENS, LAWLESS & FLACK, L.L.P.
Jack C. Nickens
Paul D. Flack
1000 Louisiana, Suite 5360
Houston, TX 77002
(713) 571-9191

O'MELVENY & MYERS LLP
Jeffrey W. Kilduff
1650 Tysons Blvd.
McLean, VA 22102
(703) 287-2402

RUSTY HARDIN & ASSOCIATES, P.C.
Rusty Hardin
1201 Louisiana, Suite 3300
Houston, TX 77002
(713) 652-9000

**RONALD G. WOODS,
ATTORNEY AT LAW**
Ronald G. Woods
6300 Memorial, Suite 1000
Houston, TX 77007
(713) 842-9600

DAVIS POLK & WARDWELL
Michael P. Carroll
450 Lexington Avenue
New York, NY 10017
(212) 450-4000

**CARRINGTON, COLEMAN, SLOMAN
& BLUMENTHAL**

James E. Coleman, Jr.
200 Crescent Court, Suite 1500
Dallas, TX 75201
(214) 855-3000

TONKON TORP LLP

William F. Martson, Jr.
Zachary W.L. Wright
1600 Pioneer Tower
888 S.W. Fifth Avenue
Portland, OR 97204-2099
(503) 802-2041

GIBBS & BRUNS, L.L.P.

Kathy D. Patrick
1100 Louisiana, Suite 5300
Houston, TX 77002
(713) 650-8805

BRACEWELL & PATTERSON, L.L.P.

J. Clifford Gunter III
Abigail K. Sullivan
South Tower Pennzoil Place
711 Louisiana Street, Suite 2900
Houston, TX 77002-2781
(713) 223-2900

SMYSER KAPLAN & VESELKA, L.L.P.

Craig Smyser
700 Louisiana Street, Suite 2300
Houston, TX 77002
(713) 221-2300

**GRAVES, DOUGHERTY, HEARON
& MOODY, P.C.**

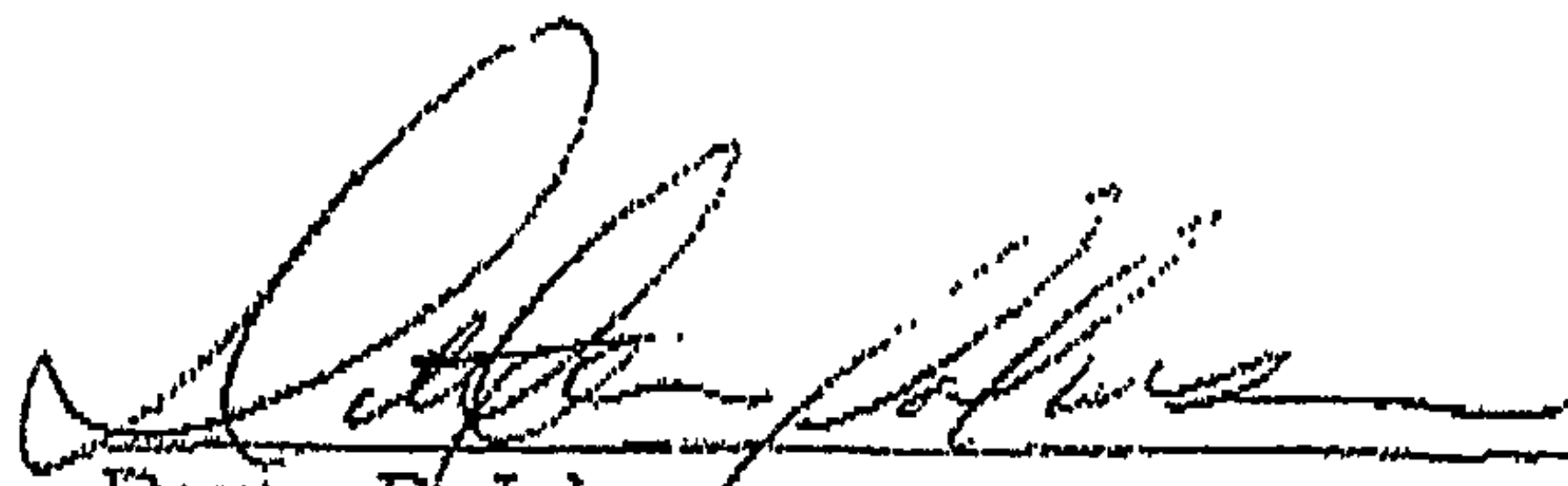
John J. McKetta III
Helen Currie Foster
515 Congress Avenue, Suite 2300
Austin, TX 78701
(512) 480-5600

BOIES SCHILLER & FLEXNER LLP

Richard B. Drubel
26 South Main Street
Hanover, NH 03755
(603) 643-9090

O'MELVENY & MYERS LLP

Bruce Hiler
555 13th Street, N.W.
Washington, DC 20004-1109
(202) 383-5300


Dexter B. Johnson